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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/540,786

09/21/2005

Andreas Melzer

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2087

30565

7590

11/25/2009

WOODARD, EMHARDT, MORIARTY, MCNETT & HENRY LLP
111 MONUMENT CIRCLE, SUITE 3700
INDIANAPOLIS, IN 46204-5137

EXAMINER

BACHMAN, LINDSEY MICHELE

ART UNIT

PAPER NUMBER

3734

NOTIFICATION DATE

DELIVERY MODE

11/25/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketDept@uspatent.com

Office Action Summary	Application No. 10/540,786	Applicant(s) MELZER ET AL.	
	Examiner LINDSEY BACHMAN	Art Unit 3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 74-101 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 74-101 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to Applicant's amendment filed 24 August 2009.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 74, 78-82, 87, 93, 94, 96-101 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chevillon et al. (US Patent 5,968,071) in view of Tsukernik (US Patent 6,558,404) and Melzer et al. (US Patent 6,847,837).

Claim 74, 78, 79, 87, 93, 94, 96, 97, 98, 99, 100, 101: Chevillon'071 teaches an implantable filter (Figure 6) that contains a conductor (11) having a first end (11a) and second end (11b) that are proximate to one another and is bent into a shape that provides mechanical filtering. Chevillon'071 also teaches a hub (5a; Figure 6 or also embodiment of Figures 9 or 10) positioned between the ends (column 5, lines 43-59; column 4, lines 19-32).

If it is not convincing that Chevillon'071 teaches a plastic hub, Tsukernik'404 teaches a filter (20) having metal struts and a hub (52) constructed of a plastic material (column 4, lines 63 to column 5, line 3). The claim would have been obvious because

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the technique of using a plastic hub was recognized as part of the ordinary capabilities of one skilled the art and the use of a plastic hub would yield predictable results.

Chevillon'071 does not teach that the capacitance and inductance of the filter are chosen to have a resonance frequency turned to the frequency of an MRI tomograph.

Melzer'837 teaches a vessel filter that has a resonance circuit that corresponds to the frequency of an external magnetic field (column 3, lines 50-60) because this allows clear, signal intensive imaging of the filter (column 3, lines 21-29) and it allows the surgeon to measure flow through the filter (column 4, lines 11-17). Further, the filter taught by Melzer'837 has a basic framework that is formed by the vessel filter (see Figures 8a, 8b) and also forms an inductance (elements 25a, 25b in Figures 8a, 8b) because this is the simplest design. It would have been obvious to one skilled in the art at the time the invention was made to modify the device taught by Chevillon'071 to have a resonance circuit that corresponds to the frequency of an external magnetic field as taught by Melzer'837 in order to clearly see the filter and also measure blood flow through the filter.

Claims 80, 81, 82: The conductor of Chevillon'071 includes conductor loop windings so the greatest spacing of conductor loop windings from each other is present in the center of the filter (see Figures 6, 9 and 10).

Claim 83, 84, 85: The conductor of Chevillon'071 has a conductor loop (region between elements 7 and 23 in Figure 6) that forms an extension that served to connect the filter to a vessel wall.

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Claim 86: The conductor of Chevillon'071 forms a double filter (elements 11 and 11 in Figure 6).

Claim 88, 89, 90, 91, 92, 95: Chevillon'071 teaches a brace (45) that can be attached to the conductor loops. Although Chevillon'071 does not teach that the brace is made of a bioabsorbable material, it is old and well known in the art to form objects temporarily placed in the body out of bioabsorbable materials. It would be obvious to form a part of the filter taught by Chevillon'071 out of a bioabsorbable material so that it does not need to be removed.

Claims 75-77 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wensel'980 in view of Tsukernik'404 and Melzer'837, as applied to claim 74 above, and further in view of Dubrul et al. (US Patent 6,238,412).

Wensel'98 in view of Melzer'837 teaches the limitations except for a non-conductive coating over the filter.

Dubrul teaches a similar device that contains a polymer coating over the filter structure (column 6, lines 37-49). All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

Claim 86 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wensel'980 in view of Tsukernik'404 and Melzer'837, as applied to Claim 80, in further view of Bates et al. (US Patent 6,224,612).

Wensel'980 in view of Melzer'837 teach the limitations of Claim 86 except for a device with a double filter.

Bates'612 teaches a similar device with a double filter (Figure 3a). The claim would have been obvious because the substitution of one known element for another would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

Claim 88-92 and 95 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wensel'980 in view of Tsukernik'404 and Melzer'837, as applied to Claim 80, in further view of Gordon (US Patent 5,938,645).

Wensel'980 in view of Melzer'837 teach the limitations of Claim 88, 89, 90, 91, 92 and 95 except for a brace connected to the conductor loops.

Gordon'645 teaches that it is old and well known to provide a brace (110) for the purpose of capturing thrombi in the vessel. It would have been obvious to one of ordinary skill in the art to modify the device taught by Wensel'980 in view of Melzer'837, with the brace taught by Gordon'645 so that it too has this advantage.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LINDSEY BACHMAN whose telephone number is (571)272-6208. The examiner can normally be reached on Monday to Thursday 7:30 am to 5 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. B./

Examiner, Art Unit 3734

/Todd E Manahan/

Supervisory Patent Examiner, Art Unit 3734